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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,595	10/06/2003	Kenneth E. Kadziauskas	17222CONCIP4	5761

7590 10/05/2006

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EXAMINER

SMITH, PAUL B

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NIT

Office Action Summary	Application No. 10/680,595	Applicant(s) KADZIAUSKAS ET AL.	
	Examiner Paul B. Smith	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/24/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,14,16-18 and 20-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4,5,8,14,16-18,20-22 and 24 is/are allowed.
- 6) ☒ Claim(s) 6,7,9 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/18/2006</u> | 6) ☐ Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 4/18/2006 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner considers the references cited therein.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6-7, 9 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams, Jr. *et al.* ('503).

4. Williams, Jr. *et al.* disclose a medical device for phacoemulsification procedures comprising a needle (20), a power source (not referenced), an input (184, 186), and a computer (122). (See Figure 3) The input is disclosed as a keyboard or set of control knobs that allow selection of parameters associated with fixed, linear, continuous and pulsating modes of phaco operation. (See Column 14 Lines 54-58) It is inherent that both ultrasonic pulse amplitude and a pulse duty cycle can be selected, since it is

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disclosed that the desired power level and the pulse rate control work together to determine the aggregate phacoemulsification power applied via the probe. (See Column 14 Lines 40-41) Further, it is disclosed that in a linear mode a foot switch may be used to control the phacoemulsification power. (See Column 14 Lines 25-28)

5. Thus, Williams, Jr. *et al.* appears to reasonably disclose every element of claims 6-7, 9 and 23.

Response to Arguments

1. Applicant's arguments, see page 7, filed 7/24/2006, with respect to the specification have been fully considered and are persuasive. The objection of the specification has been withdrawn.
2. Applicant's arguments, see page 7, filed 7/24/2006, with respect to claims 16 and 20-21 have been fully considered and are persuasive. The objection of claims 16 and 20-21 has been withdrawn.
3. Applicant's arguments see page 7, filed 7/24/2006, with respect to the 112 rejection of claim 20 have been fully considered and are persuasive. The rejection of claim 20 has been withdrawn.

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4. Applicant's arguments, see page 9 lines 1-2, filed 7/24/2006, with respect to claims 1-2, 4-5, 8, 14, 16-18, 20-21, and 24 have been fully considered and are persuasive. The rejection of claims 1-2, 4-5, 8, 14, 16-18, 20-21, and 24 has been withdrawn.

Allowable Subject Matter

5. Claims 1-2, 4-5, 8, 14, 16-18, 20-22 and 24 are allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul B. Smith whose telephone number is 571-272-6022. The examiner can normally be reached on 8 am - 4 pm.
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Paul B Smith
Examiner
Art Unit 3763

PBS
September 27, 2006